

awarded by Federal agencies. In fulfilling this requirement, the Indian Incentive Program allows an incentive payment equal to 5 percent of the amount paid to a subcontractor in performing the contract, if the contract so authorizes and the subcontractor is an Indian organization or Indian-owned economic enterprise.

[61 FR 39211, July 26, 1996]

#### **26.103 Procedures.**

(a) Contracting officers and prime contractors, acting in good faith, may rely on the self-certification of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the contracting officer has independent reason to question that status.

(b) In the event of a challenge to the self-certification of a subcontractor, the contracting officer shall refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW., MS-334A-SIB, Washington, DC 20245. The BIA will determine the eligibility and notify the contracting officer.

(c) The BIA will acknowledge receipt of the request from the contracting officer within 5 working days. Within 45 additional working days, BIA will advise the contracting officer, in writing, of its determination.

(d) The contracting officer will notify the prime contractor upon receipt of a challenge.

(1) To be considered timely, a challenge shall—

- (i) Be in writing;
- (ii) Identify the basis for the challenge;
- (iii) Provide detailed evidence supporting the claim; and
- (iv) Be filed with and received by the contracting officer prior to award of the subcontract in question.

(2) If the notification of a challenge is received by the prime contractor prior to award, it shall withhold award of the subcontract pending the determination by BIA, unless the prime contractor determines, and the contracting officer agrees, that award must be

made in order to permit timely performance of the prime contract.

(3) Challenges received after award of the subcontract shall be referred to BIA, but the BIA determination shall have prospective application only.

(e) If the BIA determination is not received within the prescribed time period, the contracting officer and the prime contractor may rely on the self-certification of the subcontractor.

(f) Subject to the terms and conditions of the contract and the availability of funds, contracting officers shall authorize an incentive payment of 5 percent of the amount paid to the subcontractor. Contracting officers shall seek funding in accordance with agency procedures.

[56 FR 41737, Aug. 22, 1991, as amended at 57 FR 20377, May 12, 1992; 61 FR 39211, July 26, 1996]

#### **26.104 Contract clause.**

(a) Contracting officers in the Department of Defense shall insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts that contain the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business subcontracting Plan.

(b) Contracting officers in civilian agencies may insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts if—

(1) In the opinion of the contracting officer, subcontracting possibilities exist for Indian organizations or Indian-owned economic enterprises; and

(2) Funds are available for any increased costs as described in paragraph (c)(2) of the clause at 52.226-1.

[56 FR 41737, Aug. 22, 1991, as amended at 60 FR 48264, Sept. 18, 1995; 61 FR 39211, July 26, 1996]

### **Subpart 26.2—Disaster or Emergency Assistance Activities**

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